



Republic v District Land Registrar Mbeere & another; Njue & 170 others (Interested Party); Ngochi & 3 others (Ex parte Applicant) (Environment and Land Judicial Review Case 49 of 2014) [2025] KEELC 5858 (KLR) (17 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5858 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 49 OF 2014**

**AK BOR, J
JUNE 17, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

DISTRICT LAND REGISTRAR MBEERE 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

AND

BONIFACE NJERU NJUE & 170 OTHERS INTERESTED PARTY

AND

FRED RIKANA NGOCHI & 3 OTHERS EX PARTE APPLICANT

RULING

1. The ex-parte applicants filed the application dated 28/9/2023 seeking to have the court review and set aside the judgment delivered on 14/2/2019. They also sought orders of inhibition, inhibiting the registration of any further dealings with the parcels of land known as Evurore/Nguthi/5, 59-61, 64-69, 73, 134-137, 149-150,153-155, 177, 198-204, 1260-1277, 1279-1280, 1306, 1303, 1309-1311, 1313-1316, 1318, 205, 206, 1250, 1254-1257, 1323-1325, 1327-1336, 1428, 1520, 1522, 1523, 1658-1681, 3445, 3446, 2690, 2697, 1320, 1322, 1682-1688, 1690-1695, 3761-3762, 1697, 1699-1715, 1717-1735, 2320, 2329-2236, 2338, 1736-1743, 1827-1828, 1872, 1923, 1973, 2096, 2114, 2147, 2173, 2174, 2208, 2236, 2255, 2257, 2294, 3999-4001, 4064, 4065, 2298, 2301,2310, 2311, 2316, 2317, 2319, 2339, 2340, 2342-2345, 2347, 2349, 2350, 2352, 2353, 2355, 2374, 2375, 3167, 3168, 2597, 2596, 2670-2674 and any subdivisions or amalgamations arising from those parcels of land pending the hearing and determination of this matter.



2. The application was made on the grounds that apparent errors existed on the face of the record as envisaged in paragraphs 8, 13, 14, 15, 17 and 20 of the impugned judgment. Further, that the errors indicated that there were two versions of the Minister's decision in the appeal yet it was clear from the evidence produced that there was one version decided in favour of the Mukera clan, the applicants. It was averred that the honorable court failed to consider that it was the interested parties led by Hesbon Nthuni who appealed to the Minister following which the Minister awarded 139.50 acres to them and the rest of the land belonged to the Mukera clan, which would have made it rule otherwise. The Applicants contended that the court was guided by the alleged second version of the Minister's appeal yet it never went deep into considering its validity yet it could have been a forgery since it was unclear with some pages missing, amounting to an error apparent on the face of the record.
3. It was urged that this court did not analyse the fact that the decision in the Minister's Appeal Case No. 1 of 1976 granting the interested parties 139.50 acres and the rest to the applicants had never been challenged nor implemented by the relevant authority to date. It was also urged that there were confirmed subdivisions of the land that is the subject matter of the suit and it was of essence that the subdivisions be preserved pending hearing and determination of the matter. The other ground was that the applicants had discovered new and important evidence which after the exercise of due diligence was not within their knowledge when this suit was filed. The Applicants urged that the application was brought in good faith and without undue delay and that the judgment was highly prejudicial to the applicants and had brought chaos to the community.
4. Norman Njue Mischeck, the third Ex-parte applicant swore the affidavit in support of the application. He deponed that the land parcels comprised in Evurore/Nguthi Adjudication Section situated in Kanduvui village had been in dispute between two clans, Nditi and Mukera since the 1960's. That both clans have been in court seeking to have the dispute resolved for several years and in 2014, they came to this court for judicial review on the implementation of the orders granted to them by the Minister in Civil Appeal No. 1 of 1976 which had not been effected. Judgment was delivered on 14/2/2019 and they were aggrieved by the court's decision and to have it reviewed. The Applicants averred that this court had the power to review the judgment.
5. It was their case that apparent errors or misconceptions existed on the face of the record at paragraphs 8, 13, 14, 15, 17 and 20 which indicate that they lost their claims on the suit properties which was not the case. They averred that there was an error apparent in paragraph 8 of the judgment which indicates "the members of Mukera Clan lost in the Minister's Appeal case no. 1 of 1976, that Mukera Clan later challenged their loss before the High Court and the Court of Appeal but lost in both instances." Further, that paragraphs 11, 14 and 20 indicated that the Minister's decision in Civil Appeal No. 1 of 1976 was "adverse to the applicants (Mukera Clan members) and that the Mukera clan lost its bid to Nditi clan (Interested parties) in all cases it has heard in court" which they contend was a mistake which they urge the court to rectify based on the records adduced in court.
6. They further contended that there was an error in paragraph 13 of the judgment where it indicated that there were two versions of the decision of the Minister and that the second version was adverse to members of Mukera. They averred that was clear through the evidence produced in court that the minister made one decision which was in their favour. The Applicants urged that the errors cited were critical mistakes since it was the interested parties represented by Hesbon Nthuni, who moved to court from Mbeere African Court, then the court of review vide case no. 8 of 1965 which were all decided in their favour and parcels numbers 1252, 1255, 1275, 1304, 1305, 2301, 2302, 2305 and 2317 were to be registered in the names of Hesbon Nthuni while other names would be deleted. They annexed copies of the orders where the decisions were made in their favour. They elaborated that they could not have appealed to the Minister if they won the case. However, it was Hesbon Nthuni representing



- the Nditi clan, the interested parties who appealed to the Minister and was awarded 139.50 acres and the rest upheld to belong to the Mukera Clan. They annexed a copy of the proceedings in Minister's Appeal Case No. 1 of 1976.
7. They contended that the apparent errors in the judgment if corrected and the court considered that they had never lost any cause of action taken against them, and taking into account what they termed as newly discovered evidence, these should drive the court to a different decision. They averred that they had discovered new and important matters or evidence which after the exercise of due diligence was not within their knowledge or could not be produced at the time the suit was filed and when judgment was passed. They exhibited copies of the letters from the 2nd respondent directed to the 1st respondent elaborating the dispute.
 8. They contended that the issue in this dispute was the implementation of the Minister's decision which the respondent had declined to implement despite having powers to do so.
 9. J.M Mbochu, the County Land Registrar swore the replying affidavit on behalf of 1st in opposition to the application. The court notes that the replying affidavit relates to different parcels of land in Nthiwa Riandu.
 10. The 1st and 2nd respondents opposed the application through grounds of opposition. They urged that review was only about errors apparent on the face of the record and not on faults and the merits of a case as in this case. They urged that the application was brought after inordinate delay from 2019 and that the applicant should file an appeal and not review.
 11. Erasmus Ireri Njeru, the 28th interested party opposed the application through the replying affidavit in which he deponed that most of the parties in the application had died including the 1st, 11th, 25th, 31st, 34th, 45th, 48th, 50th, 52nd, 55th to 61st interested parties and had not been substituted in the case. He contended that the applicants should have substituted the dead parties. He averred that the application was brought in bad faith and there had been inordinate delay in bringing the application and that the delay was not explained. He added that most of the parcels of land cited in the application had either been subdivided or had changed hands. He stated that Norman Njue Misheck filed a Notice of Appeal on 27/2/2019 but did not pursue it. He contended that the applicant had not stated which new and important evidence that it had discovered which was not within the applicant's knowledge when this suit was filed. He urged that they would be seriously prejudiced if the orders sought were granted and contended that since most of the interested parties had died, they must be substituted to for this application to be heard. He invited the court to dismiss the application and produced a copy of the notice of appeal.
 12. The court directed parties to file and exchange written submissions which it has considered. The ex-parte applicants submitted that there were errors on the record of this court's judgment issued on 14/2/2019. They contended that paragraph 8 of the decision gave the impression that the ex-parte applicants lost at the High Court and Court of Appeal, contrary to the facts relayed to the court. To substantiate that, they attached proceedings and the eventual decision of the court. They submitted that the judgment under paragraph 17 showed a clear error where it stated that the respondent did not alter the minister's decision yet it went forth to make an undertaking that compromised the decision. Further, that paragraph 20 of the judgment depicted that the Minister's decision was adverse to the ex-parte applicants, contrary to the annexures produced by the applicants. They submitted that in light of Order 45 Rule 1 of the Civil Procedure Rules, there were errors on the face of the record which were evidently clear and did not need to be established by a long drawn process of reasoning by the court.



13. Further, they submitted that they had attached letters from the Chief Land Registrar dated 10/4/2019 and 2/10/2019 and that the details of the letter dated 10/4/2019 made it clear that letter reference number C/R/R/69/4/VOLXI/150 used to lift the restriction on the subject properties by the Chief Land Registrar on 7/1/1998 was fictitious and allowed registration of members of the Nthuni Clan (the interested parties) as proprietors causing injustice to the applicants as the first entry proprietors registered on 3/8/1979.
14. They submitted further that the letter dated 2/10/2019 addressed to the 1st respondent gave directions as to the implementation of the Minister's decision in Appeal Case No. 1 of 1976 Evurore/Nguthi Adjudication Section, a step that had been ignored and downplayed by the 1st Respondent to date. They referred to a letter dated 19/10/2019 which they stated could not be discovered at the time the court made its decision and urged the court to find merit in the review application. The letter was not availed to this court.
15. The 1st respondent submitted that the Applicants had failed to meet the legal threshold for review under Order 45 of the Civil Procedure Rules. They submitted that while the applicants had adduced new evidence, they failed to demonstrate that the newly produced evidence was compelling and why that evidence was not produced earlier despite due diligence. More importantly, that the applicants had not established how the new evidence was sufficiently compelling to warrant a review of the judgment. They urged that mere production of additional evidence without showing its fundamental impact on the outcome of the case does not meet the stringent threshold for review. Further, that it is trite that review orders can only be granted where the error is apparent on the face of the record. It was their position that the errors alleged in this case are neither self-evident nor are they apparent on the face of the record. They urged that the application is an abuse of the court process and should be dismissed with costs.
16. The 28th and 29th interested parties submitted that the main applicant, Fred Rikana Ngochi, was a stranger to the proceedings as he was removed from the suit in 2019 after he stated that he did not authorise anyone to include his name in the suit. His name was officially struck out, and he had not sought to be joined in the suit. They contended that the names of the other ex-parte applicants had not been revealed making it unclear who they were. On that basis they urged the court to strike out the application.
17. They submitted that some of the people listed in the suit had died and since there was no substitution, the court could not issue orders against them. They contended that some of the parcels of land mentioned had already been transferred to people who are not part of this case and therefore the court should not make decisions that affect people who are not parties to the application.
18. They contended that there were 170 interested parties in this matter, but only 62 were sued, which means 108 were left out. They added that there was no proof that the application was served on all the parties which could lead to decisions being made and people being condemned unheard.
19. They further submitted that the mistake or error cited in the application was not enough to warrant a review of the judgment. They argued that the error mentioned was so convoluted that one could not assess how it related to the suit. They submitted that the new material discovered was discovered after the determination of the suit and averred that a letter from a registrar could not grant ownership to land.
20. The court has considered all the documents, arguments, and the submissions of all the parties. Under Order 45 Rule 1 of the Civil Procedure Rules, the court can only review its own decision in very limited situations. These are where there is a clear and apparent error or mistake on the face of the record,



where new and important evidence had been found which could not have been discovered earlier even with due diligence, or for any other sufficient reason.

21. In this case, what the ex-parte applicants are terming as an error seems to be their belief that the court misunderstood or misinterpreted the facts or their evidence. That is not the kind of clear and apparent mistake required for review. If they believe the court was wrong in its interpretation of facts or evidence, then the correct thing to do was to file an appeal against the judgment.
22. The new evidence which they claim to have presented and which was not available at the time of writing judgment has not been clearly explained, and it is not clear how it would affect the court's decision. The applicants have not given any good reason why the court should place an inhibition on the suit properties.
23. The applicants have not satisfied this court that it should review the judgment delivered on 14/2/2019. The application dated 28/9/2023 is dismissed. The ex-parte applicants shall bear the costs of the application.

DELIVERED VIRTUALLY AT EMBU THIS 17TH DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Mosomi Mageto for the Applicants

Mr. J. Irungu holding brief for Mr. J. Kiongo for the 1st and 2nd Respondents

Mr. Momanyi Gichuki for the 28th and 29th Interested Parties

Diana Kemboi- Court Assistant

